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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 745

GABRIELE GIORDANO,

Petitioner,

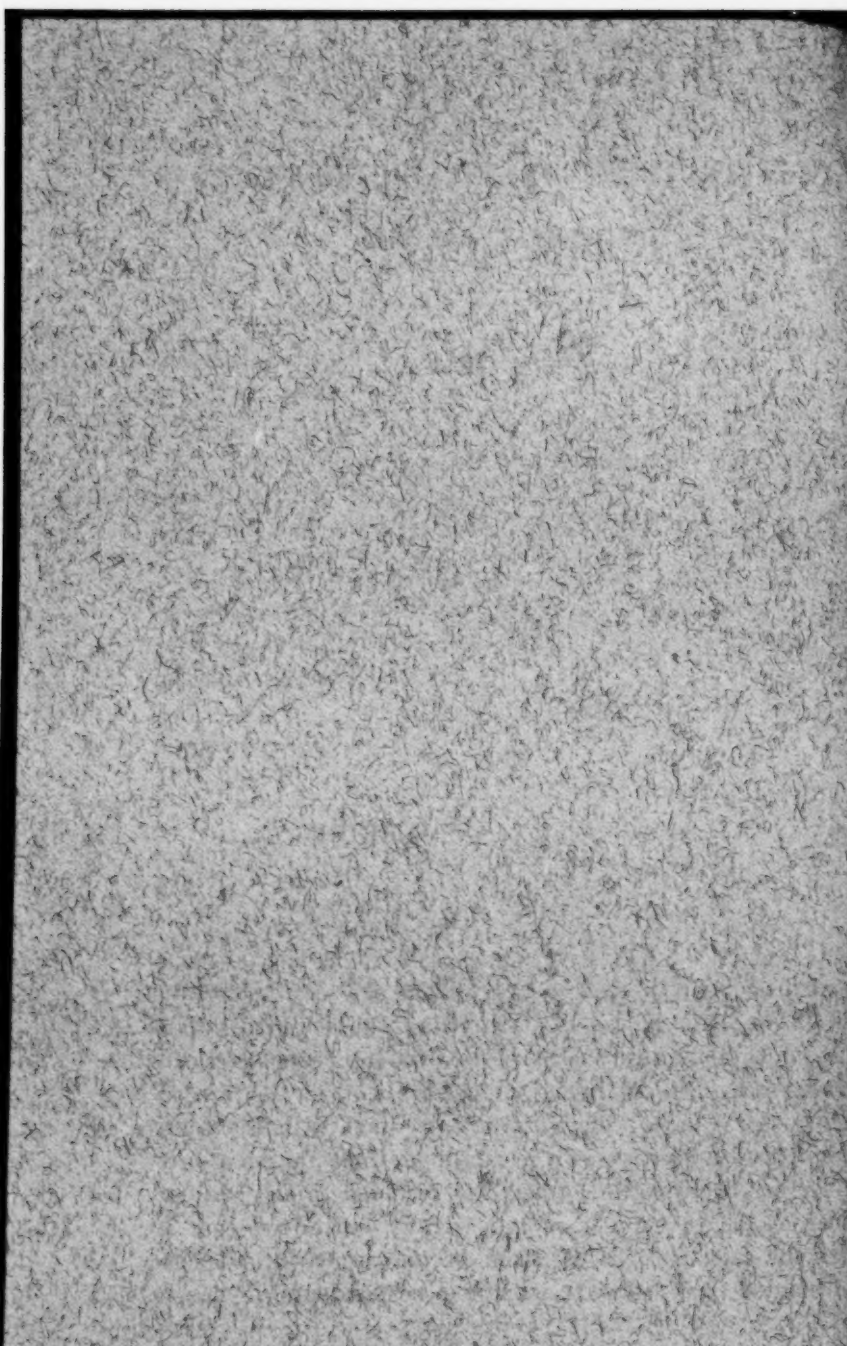
vs.

THE ASBURY PARK AND OCEAN GROVE BANK,
ET ALS.

Respondents.

PETITIONER'S REPLY BRIEF

HERBERT J. KENARIK,
Counsel for Petitioner.



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OCTOBER TERM, 1945

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GABRIELE GIORDANO,

Petitioner,

vs.

THE ASBURY PARK AND OCEAN GROVE BANK,
BODY CORPORATE; HARRY N. JOHNSON, FORMER
SHERIFF OF MONMOUTH COUNTY; THEODORE ROWE;
LOUIS STRADA, AND WILLIAM R. O'BRIEN, SHERIFF
OF MONMOUTH COUNTY,

Respondents.

PETITIONER'S REPLY BRIEF

At the outset, I respectfully point out it is significant that Nowhere in the Respondent's Brief is any attempt made to justify or uphold htis illegal sale and obviously the respondents themselves, admit its total lack of validity. The main portion of the brief filed by the respondents in this matter has reference to matters not in the record before this Court. The respondents start with the complaint that a portion of the State of Case in the Court of Errors of New Jersey was not included in the present record. As to this, it is respectfully submitted that a praecipe setting forth the parts of the record intended to be printed was served upon the respondents' counsel.

There was no objection raised. Furthermore, this additional material was unimportant and irrelevant to the case. If it had been important and relevant, respondents' counsel could and should have urged that question when the praecipe was served upon him or have followed the procedure set forth in Rule 17 of this Court to correct an alleged diminution of the record. The respondents' brief and main argument refers to matter not in the record before this Court and should not be considered.

The respondents then go on to make the specious claim that they were able to defeat the petitioner's rights in this matter simply because two (2) years after they purchased this property at an execution sale, they contrived to purchase it at a foreclosure sale. Such an artifice certainly cannot serve to defeat the petitioner's equitable claim.

The respondents then contend because the bank was closed and then reopened with a new Board of Directors, the petitioner should be deprived of the right to pursue his property. This claim is obviously without foundation, as is likewise the concern of the respondents for the creditors of the bank. The petitioner has the right to follow his property of which he was unlawfully deprived by an illegal sale.

The alleged claim of laches is adequately met in the petitioner's original brief. The fact that the bank changed Board of Directors has not changed the position of the respondent bank. There is no claim that the property sought to be pursued has suffered any substantial change in position.

Respectfully submitted,

HERBERT J. KENARIK,
Counsel for Petitioner.

